

# **EXHIBIT E**

1  
2 IN THE UNITED STATES DISTRICT COURT  
3 MIDDLE DISTRICT OF FLORIDA  
4 JACKSONVILLE DIVISION

5  
6 SEA STAR LINE, LLC, a : CIVIL ACTION  
7 limited liability :  
8 company, :  
9 Plaintiff :  
10 :  
11 vs. :  
12 :  
13 EMERALD EQUIPMENT :  
14 LEASING, INC., a :  
15 corporation, : NO. 3:04:CV-  
16 Defendant : 146-99HTS  
17

18  
19 -----  
20 January 25, 2005  
21 -----

22 Oral Deposition of THOMAS J.  
23 HOLT, SR., held in the law offices of  
24 Adelman, Lavine, Gold & Levin, P.C.,  
25 Four Penn Center, Suite 800, 1600 JFK  
Boulevard, Philadelphia, Pennsylvania  
19102, beginning at approximately  
9:34 a.m., before Ann V. Kaufmann, a  
Registered Professional Reporter,  
Certified Realtime Reporter, Approved  
Reporter of the U.S. District Court, and  
a Notary Public of the Commonwealth of  
Pennsylvania.

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19 -----

20

21

22 ESQUIRE DEPOSITION SERVICES  
23 1880 John F. Kennedy Boulevard  
24 15th Floor  
25 Philadelphia, Pennsylvania 19103  
(215) 988-9191

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Thomas J. Holt, Sr.

15  
1 position with Greenwich Terminals?

2 A. No, sir.

3 Q. Do you know who the  
4 officers of Greenwich Terminals are?

5 A. Officers I would tell you  
6 are -- I can't tell you because I really  
7 don't know.

8 Q. Do you know who any of the  
9 officers of Greenwich Terminals are?

10 A. I would not know as  
11 officers. I do know that my son Thomas,  
12 is involved in that company. As to what  
13 position he holds, I am not aware.

14 Q. Do you know who owns the  
15 company?

16 A. I would, again, give you  
17 the same answer. You would have to go  
18 ask them. I'm not involved in that  
19 company.

20 Q. What is your position with  
21 Emerald Equipment Leasing?

22 A. At what period of time?

23 Q. Well, today.

24 A. Emerald is owned by me

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Thomas J. Holt, Sr.

1 today.

2 Q. Are you an officer of

3 Emerald?

4 A. I would be the president.

5 Q. How long have you been

6 president?

7 A. Approximately since the

8 summer of 2000.

9 Q. How long have you owned

10 Emerald?

11 A. Same time frame.

12 Q. As president, what are your

13 duties and responsibilities with respect

14 to Emerald?

15 A. Standard procedures of

16 trying to operate the company through a

17 liquidation of its equipment. Emerald

18 is in bankruptcy.

19 Q. Is it in Chapter 11?

20 A. Yes, sir.

21 Q. How long has Emerald been

22 in Chapter 11?

23 A. Best guess?

24 MR. MOLDOFF: If you know.

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Thomas J. Holt, Sr.

1 A. Years ago.

2 Q. When you say "years ago,"

3 can you give me a time frame?

4 MR. MOLDOFF: Again, if you

5 know. Don't speculate.

6 THE WITNESS: When Emerald

7 was formed, whenever that was. I think

8 that was 1996 or '7, back in those days.

9 BY MR. ARMSTRONG:

10 Q. How long did Art Davis,

11 Arthur Davis, remain president?

12 A. I didn't say he was. If I

13 did, he was president, just to clear up

14 your record. I think if you go back, you

15 might see you jumped a question there.

16 It matters not.

17 He was the president from

18 when the company was formed. I took it

19 over from he and its other investors I'm

20 going to tell you sometime in the summer

21 of 2000, to my best recollection.

22 Q. Who were the other

23 investors?

24 A. Several people that I had

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Thomas J. Holt, Sr.

1 she would do for Emerald or in  
2 connection with Emerald beginning in  
3 '03.

4 A. I requested Lorraine to try  
5 to resolve the differences between Sea  
6 Star and Emerald and all the  
7 documentation that that ensued.

8 Q. How did you know Lorraine  
9 Robbins?

10 A. Oh, about 45 years ago she  
11 came to work for me.

12 Q. She has worked in your  
13 companies?

14 A. Yes, sir.

15 Q. Has she ever been an  
16 officer of any of your companies?

17 A. She was an officer of my  
18 company, Holt Cargo Systems.

19 Q. Was she an officer of Holt  
20 Group, Inc.?

21 A. I don't recall.

22 Q. Has she ever been a  
23 director of any of the companies in  
24 which you've been involved?

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1 Q. Did he have any involvement

2 with Emerald?

3 A. He was long gone before

4 Emerald. Maybe -- I don't remember.

5 Yeah, he might have. I don't remember.

6 You are back in 1997 now, I guess, which

7 would be over just about eight years

8 ago. He might have been.

9 Involved in Emerald as to

10 the extent of -- I would go back and

11 tell you he was involved with Emerald.

12 He was one of the stockholders, to my

13 knowledge, of Emerald when it was

14 formed.

15 Q. Was Lorraine Robbins a

16 stockholder of Emerald?

17 A. Not to my knowledge.

18 Q. Was --

19 A. She might have been, but

20 not to my knowledge.

21 Q. Was Arthur Davis a

22 stockholder of Emerald?

23 A. Yes.

24 Q. Do you know what percentage

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Thomas J. Holt, Sr.

1 Q. Where it was?

2 A. No, because it was the  
3 responsibility of NPR, similar to the  
4 Sea Star lease somewhat.

5 Q. Did NPR report to Emerald  
6 concerning the condition of the  
7 equipment?

8 A. No.

9 Q. When you say that NPR's  
10 responsibility was similar to the Sea  
11 Star lease, what do you mean?

12 A. Possession, movement of the  
13 equipment, maintenance of the equipment,  
14 responsibility for the equipment,  
15 whether it be stolen, damaged,  
16 whatever. The documents speak for  
17 themselves.

18 Q. Whatever the written lease  
19 or written agreement says is what --

20 MR. MOLDOFF: Objection.

21 Q. -- the responsibility was?  
22 Is that what you mean when you say "the  
23 documents speak for themselves"?

24 MR. MOLDOFF: Objection to  
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1 the form.

2 THE WITNESS: We had an

3 objection.

4 MR. MOLDOFF: I object just

5 to the form of the question.

6 MR. ARMSTRONG: He is

7 objecting to my form.

8 MR. MOLDOFF: You can answer

9 the question if you understand what it

10 is that he is asking.

11 THE WITNESS: Well, what I

12 understand is whatever the document

13 says, it says.

14 BY MR. ARMSTRONG:

15 Q. Do you understand that the

16 document defines the responsibilities of

17 Emerald?

18 MR. MOLDOFF: Well, object

19 to the form. You haven't identified

20 what document we're talking about.

21 BY MR. ARMSTRONG:

22 Q. What document are you

23 talking about?

24 A. I'm talking about the

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1 document that was put in place for the  
2 possession of Sea Star to take over the  
3 fleet of Emerald's equipment.

4 Q. Are you talking about the  
5 equipment rental agreement?

6 A. I'm talking about the  
7 equipment rental agreement. You can  
8 call it a rental agreement. I would  
9 call it a lease.

10 You talk about a series of  
11 e-mails that were exchanged between  
12 people. Why don't you introduce the  
13 documents and read them into the record,  
14 and they are self-explanatory.

15 Q. Other than the equipment  
16 rental agreement and the series of  
17 e-mails, are you aware of any other  
18 documents that define Emerald's  
19 responsibilities in connection with the  
20 equipment?

21 MR. MOLDOFF: Object to the  
22 form of the question to the extent it  
23 asks for a legal conclusion.

24 You can answer whatever you

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1 use of Sea Star, that we would sell it.

2 Sea Star bought a lot of equipment,

3 also.

4 Q. And how was MBC Leasing

5 involved in the Emerald equipment?

6 A. They held the -- without

7 legalese, they held the financial

8 interests on the equipment.

9 Q. How long had MBC Leasing

10 held the financial interest on the

11 Emerald equipment?

12 A. A couple years.

13 Q. Did there come a time when

14 MBC Leasing took control of the Emerald

15 equipment?

16 MR. MOLDOFF: Object to the

17 form.

18 THE WITNESS: I don't

19 understand what you mean by "control."

20 Did they physically take possession?

21 Not to my knowledge. It was always in

22 the possession of Emerald, to my

23 knowledge.

24 Emerald assisted MBC in

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1 trying to collect monies anywhere they

2 could, including from Sea Star,

3 attempting to properly invoice the

4 leasing of the equipment to Sea Star and

5 the liquidation of equipment that Sea

6 Star was not using so the money could

7 flow to MBC.

8 BY MR. ARMSTRONG:

9 Q. Was MBC in charge?

10 A. In charge of what?

11 MR. MOLDOFF: Objection.

12 BY MR. ARMSTRONG:

13 Q. Of the liquidation of the

14 equipment.

15 A. Not to my knowledge.

16 Q. Who was in charge?

17 A. Emerald and indirectly MBC,

18 because they also would liquidate

19 equipment and send us notices so we

20 could take it off the inventory control.

21 Q. How long have you known

22 Robert Magee?

23 A. Bob? I have known Bob

24 probably off and on for, guesstimate,

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1 piece of equipment under the agreement  
2 with NPR. That's standard procedure in  
3 the industry.

4 Q. Are you aware of any  
5 prohibitions by Emerald against NPR  
6 paying the value of lost equipment?

7 A. You mean -- "prohibitions"  
8 means what?

9 MR. MOLDOFF: Object to the  
10 form.

11 THE WITNESS: The agreement  
12 was the agreement. Whatever it was, it  
13 was.

14 BY MR. ARMSTRONG:

15 Q. And if NPR paid the value  
16 of the lost equipment, did that change  
17 the amount of the monthly payment that  
18 NPR would make?

19 A. I don't know of any  
20 agreement -- you got a real reach here.  
21 Now you are going back several years. I  
22 don't know if the agreement was per day  
23 per unit or replacement value if it was  
24 lost or it was a flat sum of money over

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Thomas J. Holt, Sr.

1 a period of years while they had the  
2 whole fleet in their possession and  
3 responsible for the whole fleet.

4 MR. MOLDOFF: Just as a  
5 general instruction, I think  
6 Mr. Armstrong would tell you the same  
7 thing, you shouldn't speculate. Or if  
8 you are, say that you are.

9 THE WITNESS: Then I don't  
10 want to comment then. I will just sit  
11 here and look stupid.

12 MR. MOLDOFF: You don't have  
13 to do that. You are not doing that.

14 BY MR. ARMSTRONG:

15 Q. Do you know Bob Leetch?

16 A. I know the name. I'm  
17 trying to recall how I know it. Did he  
18 work for me?

19 Q. No. He worked for Sea  
20 Star.

21 A. He worked for Sea Star?

22 Q. He was Sea Star's CFO.

23 A. You mean they had two CFOs,  
24 Brian and Leetch?

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Thomas J. Holt, Sr.

1 Q. How did Emerald know what  
2 equipment Sea Star was getting, that is,  
3 Emerald equipment Sea Star was getting,  
4 after April 26th?

5 MR. MOLDOFF: Object to the  
6 form.

7 THE WITNESS: Equipment you  
8 had in your possession was covered under  
9 the Navieras/Emerald inventory.

10 BY MR. ARMSTRONG:

11 Q. As far as you were  
12 concerned, Sea Star was taking all of  
13 the equipment covered under the Navieras  
14 inventory?

15 A. You were taking what the  
16 Navieras inventory was to Emerald, which  
17 was required to operate the NPR traded  
18 book of business that was purchased from  
19 Tom Hayes, always understanding that  
20 sometime in the future the equipment  
21 would be returned or purchased.

22 Q. Was it your understanding  
23 that Sea Star was taking all of the  
24 equipment —

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1 A. They attempted to use it on  
2 the basis of when you return the  
3 equipment, that TIR would be instituted.

4 Q. Was there a mechanism that  
5 a TIR be instituted when Sea Star took  
6 possession of the equipment?

7 A. It was impossible. You  
8 could not have initiated TIRs for when  
9 you took possession at 3:00 a.m. on a  
10 given day. Nobody would sit down and  
11 write several thousand TIRs. That would  
12 be presumptuous.

13 Q. It is your understanding  
14 that as of the closing of the NPR asset  
15 sale, Sea Star took possession of all  
16 equipment, all Emerald equipment, that  
17 NPR had been leasing from Emerald;  
18 correct?

19 A. It was my understanding  
20 that you took possession of all Emerald  
21 equipment that NPR was leasing in the  
22 operation of their business, and when  
23 you got done with the equipment, you  
24 would return it and a TIR would be

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Thomas J. Holt, Sr.

1 issued by Emerald or authorized or  
2 acknowledged by Emerald, which would  
3 then stop the leasing of the equipment.  
4 And in fact that's what happened.

5 Q. And am I correct in  
6 understanding that your understanding of  
7 this is based on the written agreement  
8 and the e-mails exchanged?

9 A. The agreement of what I  
10 just said, yes.

11 Q. Has anyone ever told you,  
12 said to you, that your understanding in  
13 that regard is incorrect?

14 A. As to what I just said, no.

15 Q. As of the closing of the  
16 NPR asset sale, were you aware of any  
17 equipment on lease to NPR that was being  
18 held by third parties, such as vendors  
19 or repair yards?

20 A. There was equipment that  
21 was held by vendors on monies that NPR  
22 owed to them. They were not aware that  
23 it was not NPR's equipment; it was  
24 Emerald's equipment.

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Thomas J. Holt, Sr.

1 Q. Do you recall who those  
2 vendors were?

3 A. No. There were more than  
4 several, but I don't know who they were.

5 Q. Did Emerald take steps to  
6 identify the equipment that was being  
7 held by these third parties?

8 A. Can you repeat that,  
9 please?

10 Q. Did Emerald take steps to  
11 identify the equipment that was being  
12 held by third parties?

13 A. Eventually.

14 Q. What steps did Emerald  
15 take?

16 A. Well, as it sorted itself  
17 out over a period of months, maybe  
18 years, Emerald then proceeded to take  
19 the equipment back. In some cases, we  
20 had to get the courts to do it. But  
21 specifically I can't sit here and tell  
22 you who, where, and why and how much.

23 Q. Well, did Emerald make --

24 A. There is probably still

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Thomas J. Holt, Sr.

1 equipment out there that people are  
2 holding.

3 Q. Was that equipment that was  
4 included in the NPR inventory?

5 A. No, no. You only paid for  
6 what you got. And the way we finally  
7 determined what you had is when you  
8 returned it.

9 Q. Now, you are saying that  
10 the equipment being held by third  
11 parties was not included in the NPR  
12 inventory that you received?

13 A. You are being very  
14 specific. If you can name equipment  
15 numbers, I can go back and research it  
16 for you. But there was equipment that  
17 was being held by third parties that Sea  
18 Star had to have equipment that was  
19 required, like chassis to handle the  
20 loads that were under load at the time.

21 There was -- I don't  
22 know -- a couple thousand loads that  
23 were moving then that people could have  
24 held. But whether there was equipment

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Thomas J. Holt, Sr.

1 that was being held by people that was  
2 not turned over to Sea Star because of  
3 it being held, the answer is yes.

4 Q. And was that equipment that  
5 was not turned over to Sea Star included  
6 in the NPR inventories, its lists of  
7 equipment?

8 A. That would have been in the  
9 NPR inventory because they had the  
10 inventory for Emerald. But if it wasn't  
11 turned over to you then, you weren't  
12 charged for it.

13 You were only charged for  
14 what was physically in your possession  
15 in the taking of the assets of Emerald  
16 by you when you purchased Navieras, and  
17 that's all based on your records and the  
18 records that are supported by the  
19 equipment being returned to the depots,  
20 the records of equipment being sold,  
21 because, obviously, there was equipment  
22 that was not in your possession that was  
23 sold by MBC. You were never charged for  
24 that stuff.

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Thomas J. Holt, Sr.

1 A. I presume he felt he was  
2 overpaying for the equipment; I don't  
3 know.

4 Q. Was he buying the  
5 equipment?

6 A. He was talking about buying  
7 equipment. I always thought they were  
8 going to buy all of it, but the letter  
9 speaks for itself.

10 Q. You say "We believe that  
11 the active equipment" --

12 A. Where are you now?

13 Q. The next sentence. "We  
14 believe that the active equipment  
15 population can be reconciled fairly  
16 easily, and the attached spreadsheet  
17 reflects what we feel is the correct  
18 reconciliation."

19 Do you see that?

20 A. Yeah.

21 Q. Did you participate in  
22 preparing the spreadsheet that's  
23 attached?

24 A. I don't think I did.

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Thomas J. Holt, Sr.

1 Q. Do you know who prepared

2 it?

3 A. Probably would have been

4 the computer section.

5 Q. And who was in charge of

6 the computer section?

7 A. In those days, it would

8 have been probably Shalom Cohen or John

9 Whitely. You see, as I have been

10 telling you all along, what equipment

11 you got, you got.

12 Q. Well, this spreadsheet

13 specifies "present Emerald equipment

14 fleet 4/12/02. Number of units:

15 12,837."

16 Do you see that?

17 A. Uh-huh, yes.

18 Q. Was that the number of

19 units that you were proposing to

20 transfer to Sea Star?

21 A. This, to me, says that,

22 yes.

23 Q. How did you know that the

24 Emerald equipment fleet as of April 12,

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Thomas J. Holt, Sr.

1 2002, was 12,837 units?

2 MR. MOLDOFF: If you know.

3 THE WITNESS: It's what the

4 inventory said.

5 BY MR. ARMSTRONG:

6 Q. When you say "inventory,"

7 are you referring to the NPR inventory?

8 A. We have been talking about

9 that inventory now for the last hour or

10 two.

11 Q. And you were proposing to

12 transfer 899 refrigerated containers to

13 Sea Star?

14 A. We were proposing to

15 transfer all that equipment to Sea Star

16 and give them an option to buy it, on

17 the bottom line.

18 Q. Did Sea Star accept that

19 proposal?

20 A. I don't know. Obviously,

21 in their opinion, they did not, because

22 we're here talking to you today.

23 Q. Is it your position that

24 Emerald leased or rented to Sea Star 899

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Thomas J. Holt, Sr.

1 had worked out eventually, yes.

2 Q. Do you recall when he told

3 you what the deal was?

4 A. Sometime in the two weeks

5 that the equipment was in Sea Star's

6 possession, if I have the time frame

7 proper.

8 The whole theory was you

9 were going to take the entire fleet, but

10 it just wasn't going to be. You didn't

11 need the entire fleet.

12 Q. When you say "the whole

13 theory was," whose theory was that?

14 A. Mine. I wanted you to take

15 the entire fleet.

16 Q. And that didn't happen?

17 A. No, it didn't.

18 Q. So what did Sea Star take?

19 A. All the equipment that they

20 had in their possession and eventually

21 returned or purchased.

22 Q. Was there any inventory,

23 other than the NPR inventory, done of

24 Emerald equipment in the time frame

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Thomas J. Holt, Sr.

1 Q. As of June 10, 2002, how

2 much did Emerald owe to MBC?

3 MR. MOLDOFF: Object to the

4 form.

5 Only if you know.

6 THE WITNESS: Guesstimate,

7 about 10 million.

8 BY MR. ARMSTRONG:

9 Q. As of June 10, 2002, did

10 all dispositions of Emerald equipment

11 require MBC's approval?

12 A. As of June 10th?

13 MR. MOLDOFF: Object to the

14 form.

15 THE WITNESS: I don't know.

16 That's a legal question.

17 BY MR. ARMSTRONG:

18 Q. At any time did sale of

19 Emerald equipment require MBC's

20 approval?

21 A. No.

22 Q. At any time did lease of

23 Emerald equipment require MBC's

24 approval?

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Thomas J. Holt, Sr.

1 MR. MOLDOFF: Object to the  
2 form.

3 THE WITNESS: Only with  
4 regards to Sea Star because we weren't  
5 leasing to third parties.

6 BY MR. ARMSTRONG:

7 Q. What persons were employed  
8 by Emerald to sell Emerald equipment as  
9 of June 10, 2002?

10 A. They had -- Art went out  
11 and got several agents, both in the  
12 United States and Puerto Rico, as well  
13 as the bank had to start to liquidate  
14 this equipment in an orderly fashion,  
15 all coordinated through Emerald.

16 The bank would not sell  
17 unless Emerald was involved with it for  
18 inventory control purposes, they relied  
19 very heavily on Emerald.

20 Q. What do you mean when you  
21 say "inventory control purposes"?

22 A. Emerald ran inventory  
23 controls of this equipment.

24 Q. What Emerald employees were

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Thomas J. Holt, Sr.

1 form of the question.

2 BY MR. ARMSTRONG:

3 Q. -- under the agreement?

4 MR. MOLDOFF: Object to the

5 form.

6 THE WITNESS: Well, this

7 specific paragraph speaks of equipment

8 interchange receipts subject to the

9 terms and conditions of this agreement.

10 BY MR. ARMSTRONG:

11 Q. What is an equipment

12 interchange receipt, if you know?

13 A. It is a document

14 traditionally prepared by a marine

15 terminal for when a piece of equipment

16 goes in or out of that marine terminal.

17 Q. Under that agreement, is

18 that your understanding of how Sea Star

19 was to acquire Emerald equipment?

20 A. If they wanted a piece of

21 Emerald equipment that they did not have

22 in their possession as of the 31st of

23 July, they would go get that piece of

24 equipment and have a TIR issued, either

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1 by Emerald or, in some cases, by the  
2 third parties where Emerald equipment  
3 was stored or from railroads or from  
4 their own terminal.

5 As you see, the preamble of  
6 the agreement speaks of equipment in use  
7 at various times commencing April 29,  
8 '02.

9 They had already had the  
10 equipment. This was just memorializing  
11 the more formal conditions, redelivery  
12 of equipment, maintenance, repairs, all  
13 of the things that go into a lease  
14 agreement, identification and expenses.  
15 This is a written agreement; it speaks  
16 for itself.

17 Q. How did Emerald  
18 differentiate between equipment in use  
19 and in storage as of April 29, 2002?

20 A. How did they  
21 differentiate? They did not. This  
22 speaks for equipment going out after  
23 July 31, '02.

24 They did not differentiate

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Thomas J. Holt, Sr.

1 Q. Is there any provision in  
2 this agreement that you recall that  
3 requires the signature of, quote, an  
4 Emerald representative with respect to  
5 equipment redelivered in San Juan?

6 MR. MOLDOFF: Object to the  
7 form of the question.

8 THE WITNESS: The document  
9 speaks for itself on the redelivery of  
10 equipment.

11 BY MR. ARMSTRONG:

12 Q. So if it's there, it's  
13 there. If it's not, then it's not part  
14 of the agreement; correct?

15 A. I didn't say that.  
16 Whatever the agreement says, it speaks  
17 for itself.

18 Q. And whatever the agreement  
19 says is what the agreement was; correct?

20 MR. MOLDOFF: Object to the  
21 form of the question.

22 THE WITNESS: As far as  
23 Emerald is concerned, yes.

24 BY MR. ARMSTRONG:

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Thomas J. Holt, Sr.

1 Q. Now, with respect to this  
2 agreement, is it your position that the  
3 agreement applies only to equipment  
4 delivered as of and after July 31, 2002?

5 A. This agreement  
6 formalizes --

7 MR. MOLDOFF: Object to the  
8 form of the question.

9 THE WITNESS: Thank you.

10 This agreement formalizes a  
11 previous agreement and it expounds upon  
12 it, obviously, for many other issues.

13 BY MR. ARMSTRONG:

14 Q. Does this agreement apply  
15 to all equipment, all Emerald equipment  
16 received by Sea Star?

17 MR. MOLDOFF: Object to the  
18 form of the question.

19 THE WITNESS: This agreement  
20 refers to all equipment that Sea Star  
21 had of Emerald's.

22 BY MR. ARMSTRONG:

23 Q. Does it apply to all  
24 equipment that Sea Star had of

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Thomas J. Holt, Sr.

1 Emerald's?

2 A. Yes.

3 Q. Would it be fair to say  
4 that this written agreement governs the

5 contractual relationship between Sea

6 Star and Emerald?

7 A. Yes.

8 MR. MOLDOFF: Object to the  
9 form of the question.

10 BY MR. ARMSTRONG:

11 Q. Let me show you a copy of a  
12 document that's been marked as  
13 Exhibit 56 to the Emerald deposition.

14 Have you ever seen that  
15 letter dated August 28, 2003, before?

16 A. I have seen this letter  
17 before.

18 Q. Do you recall when you  
19 first saw it?

20 A. Probably immediately after  
21 it came in.

22 Q. Did you discuss it with  
23 anyone?

24 A. I discussed it with Arthur

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Thomas J. Holt, Sr.

1 to go back and find out from the  
2 bankruptcy records what they were  
3 talking about, and that's when I first  
4 learned that you had an in-transit  
5 clause from the Court.

6 Q. By "you," you are referring  
7 to Sea Star?

8 A. I always, when I'm speaking  
9 to you, will refer to you as Sea Star,  
10 unless you were the author of this  
11 document, which it doesn't say you were.

12 Q. When you learned that there  
13 was an in-transit clause from the Court,  
14 did you take any action with respect to  
15 Emerald billings?

16 A. I told our -- Lorraine and  
17 Arthur to make sure you don't bill for  
18 that period of time.

19 Q. What did Arthur say?

20 A. He agreed.

21 Q. Did Lorraine say anything?

22 A. No. We followed the letter  
23 of the judge. Whatever the judge said,  
24 that's what we followed.

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1 this would be equipment that Sea Star  
2 would return to Philadelphia to  
3 terminate their agreement with Emerald.  
4 Greenwich is a depot to receive that  
5 equipment under the agreement that  
6 Emerald had with Sea Star, known as the  
7 Packer-Greenwich terminal, which is  
8 operated by Greenwich.

9 This equipment would come  
10 in, TIRs would be issued. That would be  
11 a charge. Storage would be issued; that  
12 would be a charge. Mounting or  
13 demounting chassis from containers would  
14 be a charge. Releasing the equipment to  
15 people to purchase it would eventually  
16 be a charge. So that's the Greenwich  
17 relationship with Emerald.

18 Q. Let me show you a copy of a  
19 letter dated July 19, 2002, which has  
20 been marked as Exhibit 18 to the Emerald  
21 deposition.

22 Have you ever seen that  
23 before?

24 A. No, but I had heard about

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1 it. This memorializes the other

2 document that you showed me.

3 Q. Was Emerald paying

4 Greenwich for any of the services listed

5 in that letter?

6 A. No. They would have been

7 invoiced to MBC by Greenwich.

8 Q. Did you become involved in

9 the Sea Star purchase of Emerald

10 chassis?

11 A. To the extent of value, if

12 we had them, I authorized them to be

13 released to them. They probably bought

14 equipment they did not even have in

15 their possession that we had to release

16 to them.

17 Q. Did you --

18 A. I did not negotiate with

19 Sea Star.

20 Q. Were you involved in

21 negotiations?

22 A. No. I never negotiated

23 with Sea Star the sale of equipment

24 directly.

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1 form.

2 THE WITNESS: If you have  
3 properly terminated it in San Juan, as  
4 per the agreement, then that's probably  
5 why you were charging us storage.

6 But if you did not properly  
7 terminate it and you had it there, it's  
8 in your possession, it was not available  
9 to us to sell, then it's in your  
10 possession.

11 All this has been  
12 documented, asked and answered, and it  
13 continues to be the same answers.

14 BY MR. ARMSTRONG:

15 Q. Is your position now that  
16 Sea Star does not owe Emerald for  
17 equipment involved in shipments in  
18 transit?

19 A. If it's in the covered  
20 period given to Sea Star by Judge  
21 Walrath, you do not owe for that  
22 in-transit period and we did not invoice  
23 for that in-transit period.

24 Q. Is it your position that

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1 your position that Sea Star would not  
2 owe under the equipment rental  
3 agreement?

4 A. If Sea Star did not place  
5 it there, then they did not have  
6 authority to place it there, so,  
7 therefore, you are not responsible.

8 But with Sea Star taking  
9 possession of that equipment from those  
10 depots, as the documentation you showed  
11 me here, it was clearly straightened out  
12 subsequently that the depots are given  
13 authority to release the product to Sea  
14 Star, "product" being chassis,  
15 container, gen-set, or whatever you had  
16 under load at the time.

17 As the documents show,  
18 there were instances where you wanted to  
19 pick up equipment and not because of  
20 money owed, but because you were a  
21 stranger to the depot, that we needed to  
22 get an authorized representative to  
23 release it to you, which at your request  
24 we did at every turn.

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1 Q. And the same would apply  
2 with respect to a repair yard, would it  
3 not?

4 A. If it's not covered under  
5 the lease to you, you would not be  
6 responsible. If you had possession and  
7 it was covered under your lease and you  
8 released it to a third party, such as a  
9 trucker or a railroad, it is your  
10 responsibility.

11 Just for one brief moment  
12 here, there is money owed and these kind  
13 of questions will probably be a matter  
14 of a judge. But there is money owed.  
15 Why don't you just tell your client to  
16 pay his bills? This is really  
17 insulting.

18 Q. You would not be taking the  
19 position, would you, that Sea Star owes  
20 for equipment in storage under the  
21 bankruptcy court's order?

22 MR. MOLDOFF: Object to the  
23 form of the question.

24 THE WITNESS: Storage where?

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1 A. In April of 2002?

2 Q. Yes.

3 A. All the equipment belonged  
4 to Emerald that Navieras had on the  
5 terminal in that time frame.

6 Q. Now, with respect to that  
7 equipment, do you know whether any of it  
8 remained in storage?

9 A. I'd have to go back and  
10 check the records.

11 MR. ARMSTRONG: Give me two  
12 minutes.

13 (Recess.)

14 MR. ARMSTRONG: No further  
15 questions.

16 I'm going to take these with  
17 me because we will use -- I don't know  
18 whether -- well, we will use some of  
19 them over the next two days, so I don't  
20 know whether you will be here.

21 MR. MOLDOFF: I never did  
22 speak to Marty McDonald.

23 (Discussion off the record.)

24 (Witness excused.)

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